

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT TEXAS
HOUSTON DIVISION

JASON MCGEHEE, *et al.*, §
Plaintiffs, §
§ Case No. 4:18-mc-01546
v. §
§ Related to E.D. Ark. Case
TEXAS DEPARTMENT OF § No. 4:17-CV-00179-KGB
CRIMINAL JUSTICE, §
Defendant. §

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE'S DISPOSITIVE MOTION TO
DISMISS PLAINTIFFS' MOTION TO COMPEL COMPLIANCE WITH SUBPOENA**

EXHIBIT 3

Privilege Log

Privilege Log for Civil Action No. 4:17-cv-00179

Objection as overbroad, over inclusive, encompassing attorney client, and work product privileges and to the unlimited nature of the request as to time and nonspecific nature of the word "All". TDCJ responds by furnishing non privileged documents within a reasonable time frame and scope. If the subpoena issuer seeks to enforce the grossly overbroad and unreasonable requests, unlimited in time or scope, TDCJ invites the issuer to file a Motion to Compel in the Southern District of Texas to which TDCJ will respond with a Motion for Sanctions and request for attorney's fees for filing a pleading making claims, "not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law" in violation of Fed. R. Civ. Proc. Rule 11(b)(2) and 11(c) for the reasons stated in TDCJ's Objections to the subpoena duces tecum. This objection as well as the previously sent subpoena objections are caveats and qualifier for each response set out below as if fully set out therein.

For each item identified in the subpoena, Exhibit A, TDCJ responds as follows:

1. All Documents, Communications, and Things arising from or related in any way to Texas's efforts to obtain pentobarbital or any other barbiturates for use in Executions in Texas, including but not limited to information about Texas's current supply of pentobarbital or other barbiturates, when Texas expects to obtain additional pentobarbital or other barbiturates, and the source(s) of pentobarbital or other barbiturates.

TDCJ Response: Please find some of the documents you requested, specifically DEA Form 236 TX001 (01.29.15); DEA Form 236 TX002 (06.08.15); FDA Detention Letter (08.04.15); FDA Determination on Shipment (04.20.17); FDA Letter, including Exhibits 1-6 (05.20.16); Purchase Order (03.27.15); Purchase Voucher & Order (02.25.15); Storage Logs 50mg (05.13.15-07.27.17); and Storage Logs 100mg (08.26.15-02.22.18). The provided documents have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.117(3), § 552.1081, § 552.136 and § 552.101, in conjunction with § 418.177. See Objections above and in previously sent Objections to the subpoena duces tecum.

2. All Documents, Communications, and Things concerning or created in connection with Executions in Texas. This includes but is not limited to:

a. Documents containing any Execution Protocol;

TDCJ Response: Please find the document you requested, specifically Execution Procedure (07.09.2012).

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

b. any Documents, Communications, or Things showing the contents of the Drug box for the subject executions;

TDCJ Response: None

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

c. any Documents, Communications, or Things obtained from an independent testing laboratory;

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TDCJ Response: Please find the document you requested, specifically Lab Reports (03.04.15-12.22.17). The provided documents have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.1081 and § 552.136. See Objections above and in previously sent Objections to the subpoena duces tecum.

d. package inserts and labels for the Drugs used in the subject executions;

TDCJ Response: None

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

e. any Documents, Communications, or Things showing the identity of the Drugs and dosages thereof injected into each of the Condemned Prisoners, and the specific timing of each such injection;

TDCJ Response: Please find the document you requested, specifically Execution Procedure (07.09.2012).

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

f. any Documents, Communications, or Things showing the specific timing, location on the body, and any other information Related to attempted and successful insertion of IVs (including peripheral and central lines), for use in an Execution, at any point prior to injection of the drugs, including any records showing how many and what attempts were made to achieve IV access for purposes of Execution;

TDCJ Response: Please find the document you requested, specifically Execution Recording Logs (01.21.15-02.01.2018). The provided documents have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.103. See Objections above and in previously sent Objections to the subpoena duces tecum.

g. any photographs, images, diagrams, video, and any other renderings of the execution chamber, execution gurney, restraints applied to the inmate, any material covering the inmate during the execution, and the subject executions themselves;

TDCJ Response: Please find the document you requested, specifically 14 videos and 16 photos.

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

h. any data or image demonstrating the size and volume of the syringes used to inject the execution drugs and saline;

TDCJ Response: Please find the document you requested, specifically Credit Card Receipts (03.17.15-01.24.18). The provided documents have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.1081 and § 552.136. See Objections above and in previously sent Objections to the subpoena duces tecum.

i. any data or image demonstrating the gauge/size, outside diameter (OD), inside diameter (ID), volume and length of the IV tubing running from the mechanism at which the lethal drugs are injected into the IV tubing to the point of insertion into the Condemned Prisoner;

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TDCJ Response: Please find the document you requested, specifically Credit Card Receipts (03.17.15-01.24.18). The provided documents have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.1081 and § 552.136. See Objections above and in previously sent Objections to the subpoena duces tecum.

j. any records or other data showing the identities and amounts of any Drugs disposed of after the Execution, as well as the method of disposal;

TDCJ Response: None

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

k. any autopsy report, any "bench notes," dictated notes or other such informal notes created during the course of any autopsy of any of the inmates listed below, and any other reports or data produced or created, and any other autopsy report, bench or other informal notes, and test results from any tests of blood, fluid, or tissue or other matter collected from any of the inmates in the subject executions, whether pursuant to the court preservation order cited above or otherwise;

TDCJ Response: None

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

l. any other event logs, timelines, drug administration records, and any memoranda, reports or drafts thereof (preliminary and final), test results or other data, and any exhibits or attachments thereto, concerning or created in connection with the Executions; and

TDCJ Response: Please find the document you requested, specifically Execution Recording Logs (01.21.15-02.01.2018). The provided documents have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.103. See Objections above and in previously sent Objections to the subpoena duces tecum.

m. any Communications or records of Communications regarding or otherwise related to the Executions.

TDCJ Response: Overly broad/Unduly vague, overly inclusive, attorney work product and attorney client confidential communication privilege

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum

3. Documents sufficient to identify Texas's current inventory or possession of pentobarbital, other barbiturates, or other execution Drugs. This includes but is not limited to:

a. package inserts and labels for the execution Drugs currently in Texas's possession, custody, or control;

TDCJ Response: None

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

b. documents showing the identity of the drugs and dosages thereof; and

TDCJ Response: Please find the document you requested, specifically Storage Logs 50mg (05.13.15-07.27.17) and Storage Logs 100mg (08.26.15-02.22.18). The provided documents

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have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.117(3). See Objections above and in previously sent Objections to the subpoena duces tecum.

c. documents showing the expiration dates of the execution Drugs.

TDCJ Response: Please find the document you requested, specifically 38 emails sent to requestors (08.02.2016-02.15.2018).

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

4. All Documents, Communications, and Things Related to any Supplier of pentobarbital or any other barbiturate, including but not limited to Communications Related to the availability of pentobarbital or other barbiturates for use in Executions; Documents, Communications, or Things identifying Suppliers of pentobarbital or other barbiturates; Documents, Communications, or Things Related to any Supplier's present, past, or future willingness to supply pentobarbital or other barbiturates to any State for use in any Execution.

TDCJ Response: Please find the document you requested, specifically DEA 222 Forms (02.17.15-02.21.17) and Credit Card Receipts (03.17.15-01.24.18). The provided documents have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.1081 and § 552.136. See Objections above and in previously sent Objections to the subpoena duces tecum.

5. All Communications between You and Defendants regarding any execution Drugs.

TDCJ Response: None

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

6. All Communications between You and Defendants regarding any Executions.

TDCJ Response: None

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.

7. All Communications between You and Any State regarding any execution Drugs.

TDCJ Response: Please find the document you requested, specifically Email from Agency to Agency (11.16.17). The provided documents have been redacted, protecting the information that is privileged under Texas law. A list of redactions has been provided.

Privilege: Tex. Code of Crim. Proc. Art. 43.14 and Texas Government Code § 552.107, § 552.1081 and § 552.111. See Objections above and in previously sent Objections to the subpoena duces tecum.

8. All Communications between You and Any State regarding any Executions.

TDCJ Response: None

Privilege: See Objections above and in previously sent Objections to the subpoena duces tecum.